



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[Docket No. AMS-FV-14-0072; FV14-900-2 FR]

**Clarification of United States Antitrust Laws, Immunity,
and Liability under Marketing Order Programs**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements an amendment to the general regulations for federal fruit, vegetable, and specialty crop marketing agreements and marketing orders that would accentuate the applicability of U.S. antitrust laws to marketing order programs' domestic and foreign activities. This action advises marketing order board and committee members and personnel of the restrictions, limitations, and liabilities imposed by those laws.

DATES: Effective July 31, 2015.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Michelle P. Sharrow, Rulemaking Branch Chief, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202)

720-2491, Fax: (202) 720-8938, or E-mail:

Geronimo.Quinones@ams.usda.gov or

Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under the general regulations for federal marketing agreements and orders (7 CFR part 900), effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action adds a new § 900.202 (Restrictions applicable to Committee personnel) under "Subpart - Miscellaneous Regulations" to accentuate the applicability of U.S. antitrust laws to marketing order program activities.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to

have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule implements an amendment to the general regulations for federal fruit, vegetable, and specialty crop marketing agreements and marketing orders that would accentuate the applicability of U.S. antitrust laws to marketing order programs' domestic and foreign activities. This action advises marketing order board and committee members and personnel of the restrictions, limitations, and

liabilities imposed by those laws.

Federal marketing order boards and committees have always been subject to U.S. antitrust laws. These boards and committees work with USDA in administering marketing order programs which, among other things, authorizes them, with approval of the Secretary, to establish and promote a program's domestic and foreign marketing activities. The Act immunizes board and committee members and employees from prosecution under U.S. antitrust laws so long as their conduct is authorized by the Act or provisions of a marketing order. This rule accentuates the applicability of U.S. antitrust laws to marketing order board and committee members and personnel in light of changing global marketing and production trends as well as advises boards and committees of the restrictions, limitations, and liabilities of those laws. Under the antitrust laws, Committee members and employees may not engage in any unauthorized agreement or concerted action that unreasonably restrains United States domestic or foreign commerce. Failing to adhere to these laws may lead to prosecution under the antitrust laws by the United States Department of Justice and/or suit by injured private persons seeking treble damages, and may also result in

expulsion of members from the Committee or termination of employment with the Committee.

Final Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 1,090 handlers who are subject to regulation under the 28 federal marketing order programs and approximately 33,100 producers in the regulated areas. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201). USDA estimates that

many of these handlers and producers may be classified as small entities. This rule accentuates the applicability of U.S. antitrust laws to marketing order programs' domestic and foreign activities. This action also advises marketing order board and committee members and personnel of the restrictions, limitations, and liabilities imposed by those laws.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS has discussed the changes to the regulations with all marketing order board and committee staff that it oversees. Moreover, AMS conducted refresher training on antitrust laws for marketing order board and committee

staff and officers at the Marketing Order Management Conference on September 23-24, 2014.

A proposed rule concerning this action was published in the Federal Register on May 6, 2015 (80 FR 25969). The rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 5, 2015, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553)

because AMS is simply updating the regulations to reemphasize the applicability of U.S. antitrust laws.

List of Subjects in 7 CFR Part 900

Administrative practice and procedure, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 900 is amended as follows:

PART 900 - GENERAL REGULATIONS

1. The authority citation for 7 CFR part 900 continues to read as follows:

Authority: 7 U.S.C. 601-674 and 7 U.S.C. 7401.

2. The authority citation for Subpart - Miscellaneous Regulations continues to read as follows:

Authority: Sec. 10, 48 Stat. 37, as amended; 7 U.S.C. 610.

3. Add § 900.202 to read as follows:

§ 900.202 Restrictions applicable to Committee personnel.

Members and employees of Federal marketing order boards and committees are immune from prosecution under the United States antitrust laws only insofar as their conduct in administering the respective marketing order is authorized by the Agricultural Marketing Agreement Act of

1937, 7 U.S.C. 601-674, or the provisions of the respective order. Under the antitrust laws, Committee members and employees may not engage in any unauthorized agreement or concerted action that unreasonably restrains United States domestic or foreign commerce. For example, Committee members and employees have no authority to participate, either directly or indirectly, whether on an informal or formal, written or oral basis, in any bilateral or international undertaking or agreement with any competing foreign producer or seller or with any foreign government, agency, or instrumentality acting on behalf of competing foreign producers or sellers to raise, fix, stabilize, or set a floor for commodity prices, or limit the quantity or quality of commodity imported into or exported from the United States. Participation in any such unauthorized agreement or joint undertaking could result in prosecution under the antitrust laws by the United States Department of Justice and/or suit by injured private persons seeking treble damages, and could also result in

expulsion of members from the Committee or termination of employment with the Committee.

* * * * *

Dated: July 27, 2015.

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

[FR Doc. 2015-18700 Filed: 7/29/2015 08:45 am; Publication
Date: 7/30/2015]